



CF0000062148

2

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

CRIMINAL APPEAL NO. 1727 / 1999

APPELLANT

(In Jail)

:

Vipin @ Bhid S/o Rimis Akka
Aged about 23 years, Occupation
Agriculture, R/o Navatoli,
Vill. Pongro, P.S. Kansabel
Distt. Jashpur Nagar (M.P.)

V E R S U S

RESPONDENTS

:

The State of M. P. Through
Police Station Kansabel,
Distt. Jashpur Nagar (MP)

CLERK
Advocate General
Jabalpur

CRIMINAL APPEAL UNDER SECTION 374(2) OF Cr.P. C.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A. 1727/99 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Division Bench: - Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. V.K. Shrivastava, JJ. 5-9-2006 Miss Sangeeta Mishra, counsel for the appellant. Mr. G.D. Vaswani, Govt. Advocate for the State/respondent. Oral judgment dictated on <i>Dais</i>. Per L.C. Bhadoo, J: - This appeal is directed against the judgment of conviction and order of sentence dated 1-5-1999 passed by the Additional Sessions Judge, Jashpurnagar in Sessions Trial No.212/98, whereby learned Additional Sessions Judge after convicting the accused/appellant for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo S.I. for five years. Case of the prosecution is that at about 7.30 p.m. on 13-10-1998, when Juvel (since deceased) was sitting in his house near one Iliyazar, the accused all of a sudden came with an axe and attacked the deceased on his head with the axe as a result of which he fell down and died instantaneously. The said incident was witnessed by Alisha Ekka (PW-4), Kum. Sushila Ekka (PW-8) and Mariam Ekka (PW-9). The matter was reported by Anil Ekka (PW-3) in Police Station: Kansabel on which the F.I.R. (Ex.P-6) was registered. The Investigating Officer after registering the crime under Section 302 of the I.P.C. left for the scene of occurrence, prepared Panchanama (Ex.P-9) of the body of Juvel and sent the body of Juvel for	

P.T.O.

मामला क्रमांक G.A.1727/99 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	post-mortem examination to Primary Health Centre, Kansabel, where Dr. Yashwant Kumar Toppo (PW-1) conducted post-mortem on the body of Juvel and prepared the post-mortem report (Ex.P-1) in which he opined that the death is due to shock and cerebral haemorrhage as a result of injury Nos.1, 2 & 4. During the investigation, while in Police custody, the accused gave memorandum Ex.P-7 and in pursuance of that he got recovered the axe (weapon of offence) under Ex.P-8. After completion of investigation, charge sheet was filed against the accused in the Court of Chief Judicial Magistrate, Jashpurnagar, who in turn, committed the case to the Sessions Judge, Raigarh, from where learned Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish charge against the accused, examined ten witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned above. We have heard Miss Sargeeta Mishra, learned counsel for the accused/appellant and Mr. G.D. Vaswani, learned Govt. Advocate on behalf of the State/respondent. Learned counsel for the appellant has not disputed the fact of homicidal death of deceased Juvel. Even otherwise, from the evidence of Alisha Ekka (PW-4) - wife of the deceased, Kum. Sushila Ekka (PW-8) &	

P.T.O.

मामला क्रमांक A.....1727/99 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Mariam Ekka (PW-9), who witnessed the crime, as also the evidence of Dr. Yashwant Kumar Toppo (PW-1) who conducted post-mortem on the body of Juvel, it is established that the death of Juvel was homicidal in nature. As far as involvement of the accused in the crime in question is concerned, learned counsel for the appellant argued that all the witnesses are interested witnesses, because they are closely related to the deceased, therefore their evidence cannot be relied upon. She also argued that no blood was found on the axe, which was recovered at the instance of the accused. On the other hand, learned Govt. Advocate appearing for the State/ respondent supported the judgment of the trial Court. It is true that the eye witnesses namely, Alisha Ekka (PW-4) is wife of the deceased, Kum. Sushila Ekka (PW-8) is daughter of the deceased and Mariam Ekka (PW-9) is sister-in-law of the deceased, but it is settled that only on account of relation, evidence of the witnesses cannot be rejected. The Court is required to scrutinize their evidence with great care and circumspection. The incident is said to have taken place at about 7.30 in the evening and Alisha Ekka (PW-4) has stated in her evidence that at that time she was at her residence and her husband was sitting near his brother-in-law Iliyazar who was suffering from ailment since last one year. When one Anil left the house, thereafter, the accused came with axe and started attacking Juvel with the axe, her daughter Sushila & son Sushil were present there, they started raising cries on which she came with kerosene lantern and saw	

P.T.O.

मामला क्रमांक C.A. 1727/99 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	that the accused was attacking her husband with the axe and he succumbed to the injuries sustained by him. Injuries were present near ear, forehead and neck. The above evidence has been corroborated by Kum. Sushila Ekka (PW-8) & Mariam Ekka (PW-9). They are close relatives of the deceased i.e. wife, daughter & sister-in-law and their presence in the house at that juncture cannot be doubted. Moreover, in cross-examination of these witnesses, defence has not been able to elicit any circumstance to show that they were not present at the time of the incident. Moreover, their evidence has been further corroborated by the evidence of Anil Ekka (PW-3) who came from the market to the house of deceased Juvel for the purpose of drinking water. He has stated in his evidence that when he left the house of deceased Juvel, he heard the screams of Alisha, therefore, he returned towards the house of Juvel, there he saw that the accused was running away, he could identify him, and he reported the matter to the Police. The ocular evidence of these witnesses further stands corroborated by the medical evidence of Dr. Yashwant Kumar Toppo (PW-1), who has stated in his evidence that he conducted post-mortem on the body of Juvel and noticed that there was incised wound on the forehead of the deceased in the size of 4 cms. x 2 cms. x 2 cms. and frontal bone was found fractured. There was another incised wound on the right side of the face below the right eye and above maxillary & zygomatic bones in the size of 4 cms. x 2 cms. x 3 cms. and both the bones were found broken. There was incised wound on the right supra clavicle region in the size of 6 cms. x 2 cms. x 3	

P.T.O.

मामला क्रमांक ...C.A. 1727/99 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Soma	cms. There was a lacerated wound on the occipital area behind the head in the size of 2 cms. x 2 cms. x 2 cms. Even as per the evidence of Investigating Officer Ghuran Ram Bhagat (PW-10), when the accused was in custody, he gave information Ex.P-7 on 23-10-1998 and in pursuance of that, he got recovered the axe, the weapon of offence, under Ex.P-8 from the house of his brother-in-law Vipin. The recovery of axe at the instance of the accused has been proved by Inder Ram (PW-5). Therefore, merely because there is no report that blood was found on the axe, ocular evidence of the prosecution witnesses cannot be disbelieved. Moreover, as has been mentioned earlier, as per the evidence of the eyewitnesses, involvement of the accused in the crime in question is established. In the circumstances, we do not find any substance in the argument of learned counsel for the appellant and the finding of the trial Court regarding involvement of the accused in the crime in question is based on legal and clinching evidence, which does not require any interference by this Court. In the result, the appeal is devoid of merit, same is liable to be dismissed and it is accordingly, dismissed. Sd/- L.C. Bhadoo Judge	Sd/- V.K. Shrivatava Judge

P.T.O.

13.9.98
20.9.98